United States Department of Labor
Employees' Compensation Appeals Board

CECELIA M. CORLEY, Appellant	)	
and	)	**Docket No. 05-324**
	)	**Issued: August 16, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Merrick, NY, Employer	)	

Appearances:
Cecelia M. Corley, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 22, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated September 21, 2004, finding that she had not established a recurrence of disability causally related to her September 2001 employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of total disability on March 15, 2002 causally related to a September 27, 2001 dog bite.

FACTUAL HISTORY

On September 27, 2001 appellant, then a 44-year-old letter carrier, sustained a dog bite to her right upper arm that day during a mauling by a 75-pound pit bull in the performance of duty. She was treated on September 28, 2001 by Dr. Louis Essman, an internist, who diagnosed

cellulitis and hematoma. On October 4, 2001 he described an open wound which had required two sutures. On October 24, 2001 Dr. Essman described a laceration and swelling of the right biceps with anxiety. On October 25, 2001 the Office accepted appellant's claim for a laceration of the right biceps, cellulitis and an anxiety reaction.[1] She returned to limited duty for six hours a day as of November 9, 2001. Appellant was released to three hours casing mail and three hours walking her route.

Appellant filed a notice of recurrence of disability on December 6, 2001 alleging that on that date she sustained a recurrence of disability due to her September 27, 2001 employment injury. She stated that the city animal control department was supposed to notify the employing establishment when the dog that bit her was returned home. While delivering mail on December 6, 2001, appellant "heard and then saw the pit bull going crazy in a pen…." Appellant became frightened and stopped work. She was returned to duty on December 8, 2001.

In a report dated December 10, 2001, Dr. Essman, an internist, stated that appellant was extremely traumatized by the September 27, 2001 dog bite and had experienced anxiety attacks. He stated that her most recent attack occurred when the dog was returned home and recommended that appellant not have any exposure to the dog while undergoing therapy. On December 12, 2001 he noted that she sustained a hematoma and laceration requiring sutures and had returned to work. Dr. Essman indicated that appellant had a 10-pound limitation on lifting with her right arm and recommended physical therapy. By letter dated January 14, 2002, the Office requested additional factual and medical evidence regarding her claimed recurrence of disability. In a facsimile dated January 18, 2002, Dr. Essman referred appellant to see a psychiatrist for treatment of post-traumatic stress disorder.

On January 21, 2002 appellant noted that she returned to light-duty work on November 9, 2001 with physical restrictions and delivered mail on her route for three hours a day. On December 6, 2001 she discovered that the dog had been returned home and became hysterical. Since December 6, 2001, appellant was no longer required to deliver mail on the 11 house block on which the dog resided. The Office accepted her claim for recurrence on March 14, 2002 and appellant received compensation for 16 hours.

On March 21, 2002 appellant filed a recurrence of disability claim alleging that she stopped work on March 15, 2002 due to her September 27, 2001 employment injury. She noted that she no longer had to deliver mail to the 11 houses on the block where the dog had bitten her, but was pressured on March 13, 2002 to deliver mail to the block.[2] On March 15, 2002 appellant alleged being pressured to deliver mail on a different route. She indicated that she refused and

[1] The record reflects that appellant came under treatment by Jane D. Walsh, a clinical social worker, on October 18, 2001. She listed a diagnosis of post-traumatic stress disorder. The Board notes that the reports of social workers do not constitute competent medical evidence as a social worker is not defined as a "physician" under the Federal Employees' Compensation Act. *See* 5 U.S.C. § 8101(2); *Ernest St. Pierre*, 51 ECAB 623, 626 (2000). Appellant also received treatment for a nonemployment-related heart condition for which she underwent cardiac catheterization and had two stents inserted.

[2] The record indicates that appellant was on annual leave for the month prior to her return to work on March 13, 2002.

noted that she was unable to cope with the reminder of the original dog attack and that she was unable to deliver mail on unfamiliar routes because of her condition.

In notes dated March 21 and 22, 2002, Dr. Essman reported that appellant became upset on December 6, 2001 when she discovered that the dog had returned to her route. He noted that it was agreed that she would not have to deliver mail on the street where the dog resided and she returned to limited duty. On March 13, 2002 appellants' supervisor advised her that because she did not have any help that day she would have to deliver to the block where the dog lived. She objected and the supervisor stated that she would go with appellant. Appellant stated "no way" and her supervisor then stated that appellant should deliver to the rest of the block omitting the dog's house. She told her supervisor that she could not do that route and appellant began to cry. The union steward thereafter met with the postmaster and the two agreed that appellant would not have to deliver the longer route. On March 15, 2002 the postmaster indicated that, if she could not deliver mail her entire route, she should complete a portion of another carrier's route. Appellant has alleged that the postmaster advised her that she was losing too much money because she was not delivering her regular route. The postmaster advised that appellant would be given a longer route to deliver. Appellant became upset and Dr. Essman found that she was disabled for work. He repeated his findings on March 25 and April 19, 2002.

In a March 26, 2002 note, Dr. Walter M. Farkas, a Board-certified psychiatrist, listed the diagnosis of post-traumatic stress disorder as a result of the dog attack. He stated that appellant was highly sensitized to dogs "to the degree that she is unable to cope and function in a setting where there is a high probability of such an encounter." She also submitted reports from Nancy J. Bartkus, a clinical social worker.

The Office requested additional factual and medical information by letter dated April 18, 2002. Appellant responded on April 16, 2002 alleging that on March 15, 2002 Joseph Schraufl, the postmaster and Leonore McAvoy, her supervisor, noted that, if she was not to deliver that portion of her route where the dog was located, she would have to walk a portion of another route. She indicated that her post-traumatic stress disorder precluded her from delivering mail on another carrier's route. Appellant stated that a union steward spoke to Mr. Schraufl and it was agreed that she would not be required to walk a portion of another route. She noted that, upon her return to work on March 13, 2002, Ms. McAvoy had attempted to persuade her to deliver that portion of her route where the dog was located. Appellant declined and someone else delivered that portion of her route.

By decision dated June 25, 2002, the Office denied appellant's claim for a recurrence of disability commencing March 15, 2002. The Office found that the medical evidence submitted lacked a detailed report from an attending physician which provided a firm diagnosis of her condition or an opinion on causal relationship. It noted that the fear of future injury was not a compensable factor of employment.

Appellant requested an oral hearing by letter dated July 17, 2002 and submitted a report from Dr. Essman of the same date which provided her history of injury. He listed the diagnosis

as post-traumatic stress syndrome, depression and pain in the right upper arm. Dr. Essman stated:

> "The symptoms [appellant] is exhibiting are a direct result of the trauma of September 27, 2001 and the subsequent events. Post[-]traumatic stress syndrome is an anxiety disorder caused by the major personal stress of a serious or frightening event such as an injury or assault. The reaction may be immediate or delayed for months. The sufferer experiences the persistent recurrence of images or memories of the event together with nightmares, insomnia, a sense of isolation, irritability and loss of concentration. [Appellant's] symptoms are consistent with her diagnosis."

Dr. Essman concluded that appellant not be exposed to situations that activated her symptoms or placed her in a stressful environment that she perceived as dangerous or threatening. He repeated the diagnoses on January 3, 2003. Appellant also submitted copies of treatment notes from the office of Dr. Farkas beginning January 29 through December 6, 2002.

A hearing was held on January 7, 2003 at which appellant appeared and testified. Following the hearing, she submitted a January 8, 2003 CA-17 form report from Dr. Farkas, who listed the diagnosis of post-traumatic stress disorder, agoraphobia and phobic disorder.

By decision dated March 13, 2003, the hearing representative affirmed the June 25, 2002 compensation order. He found that appellant failed to submit rationalized medical opinion evidence to establish that she was totally disabled beginning March 15, 2003.

Appellant requested reconsideration and submitted additional medical evidence in support of her claim. In a March 13, 2003 note, Dr. Farkas again listed post-traumatic stress syndrome and stated that appellant continued to experience fear of being injured and attacked by dogs.

In reports dated June 3 and 6, 2003, Dr. Essman reviewed appellant's history of injury and diagnosis. He stated that she experienced recurrent distressing recollections and dreams of the dog attack, experienced both psychological and physiological reactions to internal and external cues that symbolized an aspect of the event, felt detached from loved ones, isolated herself from normal activities and experienced persistent symptoms of disrupted sleep patterns, irritability, difficulty concentrating and hyper vigilance with startle response toward dogs. He stated that, when she initially returned to work on November 9, 2001, the necessary support system was not in place and that it was inevitable that appellant would be unable to succeed. Dr. Essman listed her cues for the traumatic event as going back to her same route with the dog that attacked her still within the same house, having no cooperation from work or the town in having the dog removed and her supervisor's lack of support in understanding her diagnosis. He stated:

> "Since [appellant] was constantly being exposed to internal and external cues that symbolized this traumatic event, she was never able to work towards getting healthier. She was always in crisis with these cues triggering all the symptoms of post[-]traumatic stress disorder."

Dr. Essman stated that on March 15, 2002 appellant completely decompensated when her supervisor suggested that she be required to walk someone else's route. He stated that she could not return to work in any capacity, due to the fact that she was in crisis and needed intervention in her plan of treatment.

By decision dated September 10, 2003, the Office denied modification of the prior decisions. The Office found that the medical evidence submitted was not sufficient to support appellant's claim of disability commencing March 15, 2002.

Appellant again requested reconsideration and submitted additional medical evidence. On November 18, 2003 Dr. Farkas released her to return to work for four hours a day doing inside work only. On March 10, 2004 he completed a CA-20 form listing post-traumatic stress syndrome and indicated with a check mark "yes" that appellant's condition was due to her employment. Dr. Farkas noted that appellant should avoid carrying mail in order to prevent an exacerbation of her post-traumatic stress disorder.

In a statement, David Pearsall, a coworker, stated that on March 15, 2002 Mr. Schraufl was talking to appellant in a loud, harsh tone of voice and yelling at her about how not walking a block on her route was costing him too much money. He demanded that she walk a portion to Mr. Pearsall's route and appellant began crying hysterically. Jerome Stripling stated that he witnessed Ms. McAvoy insist, with a mean tone of voice, that appellant deliver the portion of her route where the dog had attacked her. He stated that she was visibly shaken.

On July 29, 2004 Dr. Essman repeated his diagnosis of appellant's condition.

By decision dated September 21, 2004, the Office again denied modification of its prior decisions.

LEGAL PRECEDENT

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that she can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.[3] The Board notes that a recurrence of disability is defined as the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[4]

[3] *Joseph D. Duncan*, 54 ECAB ___ (Docket No. 02-1115, issued March 4, 2003); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[4] *See* 20 C.F.R. § 10.5(x). The aggravation of a preexisting condition is distinguishable as a claim for a new injury. This decision does not preclude appellant from pursuing this aspect of her case before the Office.

The issue of whether an employee has disability from performing a modified position is primarily a medical question and must be resolved by probative medical evidence. In assessing the medical evidence of record, the number of physicians supporting one position over another is not controlling; the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the physician's relative area of expertise, the opportunity for and thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested in reaching his or her stated conclusions and the medical rationale expressed in support of the physician's opinion.[5] The Board has held that a medical opinion not fortified by rationale is of diminished probative value.[6]

ANALYSIS

Appellant's claim was accepted by the Office for a laceration wound requiring two stitches, cellulitis and anxiety following a mauling by a 75-pound pit bull. Following the accepted injury, appellant was placed on limited duty. One of the provisions of her of her light-duty assignment was that she would not have to deliver mail within a certain radius of the pit-bull's house. Appellant filed a recurrence of disability in March 2002, after her supervisor and her postmaster requested that she deliver mail outside of her assigned light-duty route. In this regard, the record indicates that appellant returned to work following a period of annual leave on March 13, 2002. She was told by her supervisor that day that she would resume delivery to the block on which the dog resided because the supervisor was "low on help." Appellant said she was unable to make such delivery. On March 15, 2002 the postmaster advised appellant that she was losing too much money by delivering only her light-duty route and that she would have to deliver a different route. Appellant refused, stopped work that day and did not return; alleging disability due to her post-traumatic stress disorder. She has acknowledged that after December 6, 2001 she did not deliver mail to the houses on the block at which the dog bite incident occurred. Rather than a spontaneous change in her accepted medical condition, appellant has attributed her disability to the actions of her supervisors following her return to work on March 13, 2002. If appellant's light-duty work assignment had been withdrawn, her claim would support a claim for recurrence of disability. The facts of this claim, however, do not establish that appellant's light duty was withdrawn. Both appellant's supervisor and the postmaster discussed route changes with appellant. However, appellant was never required to actually perform work outside of her light-duty assignment. Because appellant became upset at the suggestion of changes in her route, the reassignment never took place.

Moreover, the medical evidence of record does not support appellant's claim. Her claim was accepted, in part, for an anxiety reaction following the dog bite. The medical evidence submitted in support of her claim has diagnosed her condition as post-traumatic stress disorder. The Board notes that this diagnosis was first rendered in October, 2001, by Jane D. Walsh, a clinical social worker. As noted, a social worker is not a "physician" as defined under the Act and the report of appellant's condition does not constitute competent medical opinion evidence.[7]

[5] *See Maurissa Mack*, 50 ECAB 498 (1999).

[6] *See Annie L. Billingsley*, 50 ECAB 210 (1998).

[7] *See, supra*, note 1.

Subsequent medical reports of Dr. Essman, an internist, accepted this diagnosis; however, the Board notes that he is not a specialist in the field of psychiatry and there was insufficient discussion by Dr. Essman of the medical evidence upon which he relied in making the diagnosis.[8] In addition, his reports contemporaneous to March 15, 2002 attributed appellant's disability to the actions of her supervisor and the postmaster following her return to work. The reports provided by Dr. Farkas, a Board-certified psychiatrist, also listed the diagnosis of post-traumatic stress disorder. In this regard, however, the physician did not provide any narrative medical report describing appellant's history of injury, any mental status examination of appellant or the results of any diagnostic testing. Subsequent form reports from Dr. Farkas also noted diagnoses of agoraphobia and phobic disorder and opined, with a check mark, that the conditions for which he was treating appellant was related to her federal employment. It is well established that a physician's opinion on causal relationship that consists of checking "yes" to a form question is of diminished probative value.[9] Due to these deficiencies in the medical evidence, appellant has failed to meet her burden of proof in establishing that she sustained a recurrence of disability on or after March 15, 2002 due to a change in the nature and extent of her accepted condition.

CONCLUSION

The Board finds that appellant has failed to establish a recurrence of total disability on or after March 15, 2002 causally related to the September 27, 2001 dog bite.

[8] Medical opinions based on an incomplete history or which are speculative or equivocal are of diminished probative value. *See Frank Luis Rembisz*, 52 ECAB 147 (2000).

[9] *See Gary J. Watling*, 52 ECAB 278 (2001).

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 16, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board